IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2416 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DILIP VRAJLAL PAREKH & 3 - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR SHIRISH JOSHI for Petitioner(s) : 1 - 4, 4.2.1,4.2.2
MR LR PUJARI AGP for Respondent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 04/04/2007

ORAL JUDGMENT

1. Heard Mr.Shirish Joshi, learned counsel for the petitioners and Mr.L.R. Pujari, learned Assistant Government Pleader for the State.

2. On 7/12/1953, a lease deed was executed between the parties and lease commenced from 14/12/1953 in favour of the petitioners for a parcel of the land for running a Saw Mill. It was made clear in the lease deed that the licensee / lessee would be entitled to raise some construction for residence of the staff etc. The lease was in favour of Himmatlal Amrutlal, but in a family partition, the land came in the share of Vrajlal Amrutlal. The Dy.Collector held the allotment of the share as breach of lease condition and by order dtd.26/6/1972, cancelled the lease. However, the said order was set aside by the Collector in the appeal proceedings holding that the family partition would not amount to a transfer. On 28/1/1991, the Dy.Collector, after due notice to the petitioners, passed an order under sec.79 of Bombay Land Revenue Code directing vesting of land in the Government on the ground that there was breach of lease condition, in Case No.4 of 1990. The petitioners, being aggrieved by the said order, preferred Revenue Appeal No.64/90/91/1463/92, the Collector vide his order dtd.25/2/1992 dismissed the appeal, but, however, granted liberty in favour of the petitioners to make an application to the competent authority seeking

permission to change the user. The petitioners did not challenge the order dtd.25/2/1992 any further, but, however, made an application to the Collector seeking change of user, the matter was registered as Land/1/Vashi/4737/94, the application came to be rejected on 5/10/1994 observing that the the application was misconceived, because the petitioners had already changed the user much before making the application. The petitioners, being aggrieved by the said order, filed Case No.SRD/Land/Bhavan/3/1995, which was heard and finally disposed of by the Dy.Secretary (Appeals), Revenue Department, vide his order dtd.19/1/1999 holding that once the Collector had approved the order for cancellation of the lease and forfeiture of the land, then the petitioners were not entitled to such a liberty and in any case, in view of the findings recorded in the earlier proceedings that the petitioners had committed breach, the petitioners were not entitled to grant of any relief. The petitioners are now before this Court.

3. After taking me through all these orders, Mr.Joshi, learned counsel for the petitioners submitted that if the State Government was of the opinion that the Collector could not grant such permission in favour of the petitioners,

then, the State Government should have set aside the order dtd.25/2/1992 passed by the Collector and should have asked him to reconsider the entire matter.

4. In the opinion of this Court, when the order dtd.25/2/1992 was not challenged by the petitioners before any competent authority then in any collateral or consequential proceedings, the said order can not be set aside. The observations made by the State Government in its final order dtd.16/1/1999 are not to be read in isolation but must be read in the context and the context was that on an earlier occasion, lease was granted, the conditions of the lease were violated, the Dy.Collector directed cancellation of the lease and the order passed by the Dy.Collector was confirmed in appeal. These facts, in the opinion of this Court, were even otherwise sufficient for the State Government to reject the application for change of the user. It is also to be noted that the application for change of the user can be filed by a person who has a right to remain upon the land or who holds the land. In the present case, once the lease was cancelled, the petitioners lost all their rights and interest in the land, they even could not continue in possession over the said land. Once it is held that the petitioners

were not entitled to continue in possession or had no right to hold the land, then their application for change of user, in fact, would be a misconceived application. The State Government was absolutely justified in rejecting the application.

5. Mr.Joshi, learned counsel for the petitioners submit that the order passed by the Dy.Collector cancelling the lease and the order passed by the Collector confirming the said order have also been challenged before this Court.

6. Bare perusal of the petition would show that the petitioners have simply sought a relief for quashing of the said orders, but have not led any foundation in the writ application. Under the circumstances, the correctness, validity and propriety of the earlier orders passed by the Dy.Collector and confirmed by the Collector in appeal, cancelling the lease cannot be looked into.

7. I find no reason to interfere. The petition deserves to and is accordingly dismissed. Rule is discharged. Interim relief, if any, is vacated.

(R.S. GARG, J.)

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